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tract of agency as compensation for the difficulty it has occasioned the plaintiff in obtaining employment elsewhere the conclusion of the majority in the House of Lords seems correct, for the object of a contractual action is to put the plaintiff, as nearly as possible, in the position in which he would have been if the contract had not been broken, and it is difficult to see how six months' notice of dismissal would of itself necessarily have affected the ability of the plaintiff to find new employment.

H. E.

EXTRA TERRITORIAL OPERATION OF STATUTES AS TO BIGAMY.

In considering the crime of bigamy the point has been frequently raised, whether a conviction for the commission of that crime is proper in a State where the defendant has lived with his second wife, though the second, or unlawful, marriage was really solemnized in another State. At common law the rule is that only in the place where the criminal marriage was solemnized is conviction proper, and this has been generally followed in the United States.¹ Thus, in a case where the second marriage was performed in Tennessee, and the Kentucky court was asked to assume jurisdiction because the defendant resided in the latter State, the Court says, "The offense of bigamy is committed by the act of marrying one woman, while the wife by a former marriage is still alive, and the first contract is in force. That act was committed in Tennessee, and to try to punish for it, the courts thereof, alone, at common law have jurisdiction."²

In many States, however, the offense of cohabitation under a vicious marriage contracted in another State, is punishable in the State where such cohabitation exists.³ In such States the defendant is not punished as for a bigamous marriage but cohabiting with the unlawful wife or husband is the gist of the offense.

In England, bigamy is defined by statute,⁴ and there under

¹ *Brewer v. State*, 59 Ala. 101; *Johnson v. Com.*, 86 Ky. 122; *State v. Barnett*, 83 N. C. 615; *Com. v. Bradley*, 2 *Cush.* 533; *State v. Sweetser*, 53 Mo. 438; *Scroggins v. State*, 32 Ark. 205; *People v. Mosher*, 2 *Park Crim.* (N. Y.) 195.

² *Johnson v. Com.*, 86 Ky. 122.

³ *Brewer v. State*, 59 Ala. 101; *Com. v. Bradley*, 2 *Cush.* 533; *State v. Palmer*, 18 Vt. 520.

⁴ 9 Geo. IV, c. 31, § 22; 24 and 25 Vict., c. 100, § 53.

the statutes there may be conviction for bigamy where the guilty party is apprehended or held in custody, no matter where the second marriage took place, and under the English statutes it was consistently held, that, where a British subject usually resident in England contracted a second marriage in Scotland during the life of his wife, he was liable to be convicted of bigamy in England.⁵

The North Carolina statute which defines and provides for the punishment of bigamy is a substantial re-enactment of the English statute and is worded as follows: "If any person being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in the State of North Carolina or elsewhere, every such offender . . . shall be guilty of a felony," etc. While the English statute had no constitutional limitation to its operation, the question recently was presented to the courts of North Carolina in the case of *State v. Ray*, 66 S. E. 204, whether so much of the statute was valid as attempted to punish in a case where the second marriage took place without the State of North Carolina, and it was there held, following a previous adjudication in the same State,⁶ that in that respect the North Carolina statute was unconstitutional. The underlying reason of that previous decision⁶ seems to be epitomized in the following extract from the opinion of the Court:—"Our statute applies by its terms as well to a citizen of another State, who in transitu affords to the local authorities the opportunity to apprehend him, as to those who become domiciled within our borders. As a citizen of another State he has the privilege of demanding a trial in the particular locality and by a jury of the vicinage; and it would deprive him of that right, guaranteed by the Federal constitution, to arrest him while temporarily within this State, and, under the pretense of punishing him for the felony of coming into the State after a bigamous marriage, try him, remote from the locality where the marriage was celebrated and his witnesses reside, for an offense involving only the question whether the second marriage was in fact bigamous." This conclusion was based on the construction given by the North Carolina courts to the provision of the State constitution providing for trial by jury in criminal cases, that it was a guarantee to every person (whether a citizen of the State or of another commonwealth) of a trial by a jury of the vicinage, unless after indictment it

⁵ *Reg v. Topping*, 7 Cox C. C. 103.

⁶ *State v. Cutshall*, 110 N. C. 538.

should appear to the judge necessary to remove the case to some neighboring county in order to secure a fair trial. A subsequent North Carolina case⁷ tried to give force to the whole statute by holding that cohabiting in North Carolina, after the second marriage elsewhere, was bigamy under the statute, bigamy being a status and not merely the wedding ceremony, but the principle case repudiated this construction of the statute and declared it was unconstitutional in so far as it aimed to have extra-territorial effect.

The result reached in interpreting this North Carolina statute rests upon the general proposition that the legislative authority of every State must spend its force within the territorial limits of the State. As Cooley says,⁸ "The legislature of one State cannot make laws by which people outside must govern their actions, except as they may have occasion to resort to the remedies which the State provides, or to deal with property situated within the State. It cannot provide for the punishment as crimes of acts committed beyond the State boundary, because such acts, if offenses at all, must be offenses against the sovereignty within whose limits they have been done." One State cannot therefore punish crimes committed in and against another State.⁹

The Texas legislature enacted several statutes similar in their purport to the North Carolina statute; thus, the Texas anti-trust law of 1889 provided "that persons outside of the State may commit offenses under the statute and be liable to indictment therefore, which provision was held null and void as unconstitutional by the U. S. Circuit Court sitting in Texas.¹⁰ In strange contrast with this decision is the decision of the Texas Court of Appeals¹¹ in considering an article of the Texas Criminal Code, which provided that "persons out of the State may commit and be liable to indictment and conviction for committing any of the offenses enumerated in this chapter, which do not in their commission necessarily require a personal presence in the State, the object of this statute being to reach and punish all persons offending against its provisions within or without the State." The article was held constitutional as applied to the following circumstances—the defend-

⁷ *State v. Long*, 143 N. C. 670.

⁸ Cooley—Constitutional Limitations, p. 176.

⁹ *State v. Hall*, 114 N. C. 909; *State v. Carter*, 27 N. J. 499; *Tyler v. People*, 8 Mich. 320.

¹⁰ *In re Grice*, 79 Fed. 627.

¹¹ *Hanks v. State*, 13 Tex. App. 289.

ants in Louisiana forged a transfer of a land certificate for land in Texas which was considered a conspiracy extra-territorially to defeat the State's laws, which warranted an infra-territorial responsibility under the statute.

It has also been held that the State may criminally punish the sale within its jurisdiction of tickets in a lottery organized in another State where it is lawful.¹²

The history of the interpretation of the Pennsylvania statute defining and punishing bigamy presents an interesting situation. The act of March 31, 1860, sec. 34,¹³ enacts, "If any person shall have two wives or two husbands at one and the same time, he or she shall be guilty of a misdemeanor," etc. This act came up for interpretation under the following circumstances.¹⁴ The defendant was indicted for bigamy, to which indictment he pleaded the Statute of Limitations as to prosecution for a misdemeanor, which was two years, it appearing that the second marriage took place more than two years prior to the prosecution. The Court confronted with this plea declared that even under the statute as worded, bigamy was not a continuing offense, and that the act taken literally defines no offense, "for the reason that, under the laws of Pennsylvania, it is impossible for a man to have two wives, or a woman to have two husbands at the same time." The Court goes on to say that the second woman is never a wife, and then proceeds to accept the common law proposition that the crime of bigamy is complete when the second marriage occurs, from which it follows that the statute would commence to run at that time.

The necessary consequence of this decision was reached in a later county court case,¹⁵ where the defendant was held not indictable for bigamy under the following circumstances: both parties were residents of Philadelphia simply going to New Jersey to get married and then returning to Philadelphia. Arnold, J., said, "An indictment for bigamy cannot be sustained in this State when the second marriage took place without the State." It is therefore seen that, while on its face the Pennsylvania statute would seem to punish the cohabitation after a second marriage, its relation to the Statute of Limitations has brought about its interpretation as punishing the contracting of the second marriage, which robs it of effect in cases where the second marriage took place without the State. S. D. C.

¹² *People v. Noelke*, 94 N. Y. 137.

¹³ Pamphlet Laws, 392.

¹⁴ *Gise v. Com.*, 81 Pa. 428.

¹⁵ *Com. v. Huckel*, 4 Pa. County Court, 576.